

NTSB Order No. EA-4447

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of April, 1996

Docket SE-14273

respondent had violated 14 C.F.R. 61.15(a)(2).² We deny the appeal.

The Administrator's complaint and order of revocation alleged that, in 1990, respondent was convicted in United States District Court of, among other things, distribution of cocaine and conspiracy to possess with intent to distribute cocaine. He is now serving a jail term of in excess of 20 years for these offenses. Documents related to respondent's criminal conviction, supplied by respondent with his appeal from the Administrator's order, indicate that, for 5 years, respondent "act[ed] as a source of supply of cocaine for distribution in the Detroit Metropolitan area."

Respondent's appeal from the complaint did not deny the Administrator's claims. Instead, respondent argued that, because there was no allegation that he had used his airman's certificate in the offense, because he always exercised care and judgment as an airman, because his appeal of his conviction was pending, and because the District Court's sentence was "draconian," his certificate should be suspended, rather than revoked.

²Section 61.15(a)(2) provides:

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

(2) Suspension or revocation of any certificate or rating issued under this part.

The Administrator moved for summary judgment, contending that respondent's drug-related offenses were egregious and warranted the extreme sanction of revocation. The law judge granted the motion, noting in his order that respondent had not filed a response to it. In support of his decision, the law judge cited Administrator v. Piro, NTSB Order No. EA-4049 (1993), where we said:

The Board has repeatedly expressed the view that revocation should be upheld on charges under section 61.15 without regard to aircraft involvement if the drug offense underlying the charge is serious enough to draw into question the airman's qualification to hold a certificate. . . . In our judgment, any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

Id. at 3-4.

On appeal, respondent contends it was error for the law judge to decide the matter without respondent's reply to the motion and request for discovery (as well as his answer to the Administrator's discovery request), which apparently were delayed in the mail and not received by the Board until after the law judge issued his decision. Substantively, respondent again does not contest the facts as demonstrated by the Administrator. Respondent instead repeats arguments favoring suspension that he

made earlier.³

Respondent's claims do not in any manner justify the remand he seeks. The facts here fit squarely within the circumstances described in Piro. Neither consideration of respondent's answer to the Administrator's motion nor the opportunity for discovery would alter the factors critical to the sanction determination. The circumstances of respondent's criminal conviction amply warrant a finding that respondent lacks the qualifications required of holders of airman certificates.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's airman certificate shall begin 30 days from the date of service of this order.⁴

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

³In his answer to the motion for summary judgment, respondent concedes that revocation is available under existing precedent.

⁴For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to 14 C.F.R. 61.19(f).